

1                   **HOUSE JOINT RESOLUTION NO. 23**2  
3                   (By Delegates Miller, J., Overington, Lane,  
4                                           Sobonya and Andes)5  
6                   [Introduced January 18, 2011; referred to the  
7                   Committee on Constitutional Revision then Finance.]8                   **FISCAL**  
9                   **NOTE**10 Proposing an amendment to the Constitution of the State of West  
11 Virginia, amending article X thereof by adding thereto a new  
12 section, designated section 1d, relating to a taxpayer's bill  
13 of rights intended to reasonably restrain the growth of  
14 government; numbering and designating such proposed amendment;  
15 and providing a summarized statement of the purpose of such  
16 proposed amendment.17           *Resolved by the Legislature of West Virginia, two thirds of*  
18 *the members elected to each house agreeing thereto:*19           That the question of ratification or rejection of an amendment  
20 to the Constitution of the State of West Virginia be submitted to  
21 the voters of the state at the next general election to be held in  
22 the year 2012, which proposed amendment is that article X thereof  
23 be amended by adding thereto a new section, designated section 1d,  
24 to read as follows:25 **ARTICLE X. TAXATION AND FINANCE.**26 **§1d. The Taxpayer's Bill of Rights.**

1                   Subsection A -- General Provisions

2           This section takes effect January 1, 2013, or as stated. Its  
3 preferred interpretation shall reasonably restrain most of the  
4 growth of government. All provisions are self-executing and  
5 severable and supersede conflicting state constitutional, state  
6 statutory, charter, or other state or local provisions. Other  
7 limits on district revenue, spending and debt may be weakened only  
8 by future voter approval. Individual or class action enforcement  
9 suits may be filed and shall have the highest civil priority of  
10 resolution. Successful plaintiffs may be allowed costs and  
11 reasonable attorney fees, but a district is not, unless a suit  
12 against it be ruled frivolous. Revenue collected, kept, or spent  
13 illegally since four full fiscal years before a suit is filed shall  
14 be refunded with 10 percent annual simple interest from the initial  
15 conduct. Subject to judicial review, districts may use any  
16 reasonable method for refunds under this section, including  
17 temporary tax credits or rate reductions. Refunds need not be  
18 proportional when prior payments are impractical to identify or  
19 return. When annual district revenue is less than annual payments  
20 on general obligation bonds, pensions, and final court judgments,  
21 subdivision (1) of subsection D and subsection G shall be suspended  
22 to provide for the deficiency.

23                   Subsection B -- Term Definitions

24           Within this section:

1       (1) "Ballot issue" means a nonrecall petition or referred  
2 measure in an election.

3       (2) "District" means the state or any local government,  
4 excluding enterprises.

5       (3) "Emergency" excludes economic conditions, revenue  
6 shortfalls or district salary or fringe benefit increases.

7       (4) "Enterprise" means a government-owned business authorized  
8 to issue its own revenue bonds and receiving under 10% percent of  
9 annual revenue in grants from all state and local governments  
10 combined.

11       (5) "Fiscal year spending" means all district expenditures and  
12 reserve increases except, as to both, those for refunds made in the  
13 current or next fiscal year or those from gifts, federal funds,  
14 collections for another government, pension contributions by  
15 employees and pension fund earnings, reserve transfers or  
16 expenditures, damage awards or property sales.

17       (6) "Inflation" means the percentage change in the United  
18 States Bureau of Labor Statistics Consumer Price Index for South,  
19 all items, all urban consumers, or its successor index.

20       (7) "Local growth" for a nonschool district means a net  
21 percentage change in actual value of all real property in a  
22 district from construction of taxable real property improvements,  
23 minus destruction of similar improvements, and additions to, minus  
24 deletions from taxable real property. For a school district, it

1 means the percentage change in its student enrollment.

2 *Subsection C -- Election Provisions*

3 (1) Ballot issues shall be decided in a state general  
4 election, biennial local district election, or on the first Tuesday  
5 of November of odd-numbered years. Except for petitions, bonded  
6 debt, or charter or Constitutional provisions, districts may  
7 consolidate ballot issues and voters may approve a delay of up to  
8 four years in voting on ballot issued. District actions taken  
9 during such a delay shall not extend beyond that period.

10 (2) At least ~~30~~thirty days before a ballot issue election,  
11 districts shall mail at the least cost, and as a package where  
12 districts with ballot issues overlap, a titled notice or set of  
13 notices addressed to "All Registered Voters" at each address of one  
14 or more active registered electors. The districts may coordinate  
15 the mailing required by this paragraph (2) with the distribution of  
16 ballot or election information as otherwise required in order to  
17 save mailing costs. Titles shall have this order of preference:  
18 "NOTICE OF ELECTION TO INCREASE TAXES / TO INCREASE DEBT / ON A  
19 CITIZEN PETITION / ON A REFERRED MEASURE." Except for district  
20 voter-approved additions, notices shall include only:

21 (i) The election date, hours, ballot title, text and local  
22 election office address and telephone number.

23 (ii) For proposed district tax or bonded debt increases, the  
24 estimated or actual total of district fiscal year spending for the

1 current year and each of the past 4 four years, and the overall  
2 percentage and dollar change.

3 (iii) For the first full fiscal year of each proposed district  
4 tax increase, district estimates of the maximum dollar amount of  
5 each increase and of district fiscal year spending without the  
6 increase.

7 (iv) For proposed district bonded debt, its principal amount  
8 and maximum annual and total district repayment cost, and the  
9 principal balance of total current district bonded debt and its  
10 maximum annual and remaining total district repayment cost.

11 (v) Two summaries, up to 500 five hundred words each, one for  
12 and one against the proposal, of written comments filed with the  
13 election officer by 45 forty-five days before the election. No  
14 summary shall mention names of persons or private groups, nor any  
15 endorsements of or resolutions against the proposal. Petition  
16 representatives following these rules shall write this summary for  
17 their petition. The election officer shall maintain and accurately  
18 summarize all other relevant written comments. The provisions of  
19 this paragraph (v) do not apply to a statewide ballot issue, which  
20 is subject to the provisions of section 1 of article V of this  
21 Constitution.

22 (3) Except by later voter approval, if a tax increase or  
23 fiscal year spending exceeds any estimate in paragraph (iii),  
24 subdivision (2) of this subsection for the same fiscal year, the

1 tax increase is thereafter reduced up to 100% percent in proportion  
2 to the combined dollar excess, and the combined excess revenue  
3 refunded in the next fiscal year. District bonded debt shall not  
4 issue on terms that could exceed its share of its maximum repayment  
5 costs in paragraph (iv) of subdivision (2) of this subsection.  
6 Ballot titles for tax or bonded debt increases shall begin: "SHALL  
7 (DISTRICT) TAXES BE INCREASED (first, or if phased in, final, full  
8 fiscal year dollar increase) ANNUALLY....?" or "SHALL (DISTRICT)  
9 DEBT BE INCREASED (Principal amount), WITH A REPAYMENT COST OF  
10 (Maximum total district cost),...?"

11 *Subsection D -- Required Elections*

12 Starting in the general election to be held in 2012, districts  
13 must have voter approval in advance for:

14 (1) Unless subsection A or subsection F applies, any new tax,  
15 tax rate increase, mill levy above that for the prior year,  
16 valuation for assessment ratio increase for a property class, or  
17 extension of an expiring tax, or a tax policy change directly  
18 causing a net tax revenue gain to any district.

19 (2) Except for refinancing district bonded debt at a lower  
20 interest rate or adding new employees to existing district pension  
21 plans, creation of any multiple-fiscal year direct or indirect  
22 district debt or other financial obligation whatsoever without  
23 adequate present cash reserves pledged irrevocably and held for  
24 payments in all future fiscal years.

1                   Subsection E -- Emergency Reserves

2           To use for declared emergencies only, each district other than  
3 the state shall reserve for 2011 1% percent or more, for 2012 2  
4 percent or more, and for all later years 3% percent or more of its  
5 fiscal year spending excluding bonded debt service. Unused  
6 reserves apply to the next year's reserve.

7                   Subsection F -- Emergency Taxes

8           This subsection grants no new taxing power. Emergency  
9 property taxes are prohibited. Emergency tax revenue is excluded  
10 for purposes of subdivision (3) of subsection C and subsection G,  
11 even if later ratified by voters. Emergency taxes shall also meet  
12 all of the following conditions:

13           (1) A two-thirds majority of the members of each house of the  
14 Legislature or of a local district board declares the emergency and  
15 imposes the tax by separate recorded roll call votes.

16           (2) Emergency tax revenue may be spent only after emergency  
17 reserves are depleted, and shall be refunded within ~~180~~ one hundred  
18 eighty days after the emergency ends if not spent on the emergency.

19           (3) A tax not approved on the next election date ~~60~~ sixty days  
20 or more after the declaration shall end with that election month.

21                   Subsection G -- Spending Limits

22           (1) The maximum annual percentage change in state fiscal year  
23 spending equals inflation plus the percentage change in state  
24 population in the prior calendar year, adjusted for revenue changes

1 approved by voters after 2010. Population shall be determined by  
2 annual federal census estimates and the number shall be adjusted  
3 every decade to match the federal census.

4 (2) The maximum annual percentage change in each local  
5 district's fiscal year spending equals inflation in the prior  
6 calendar year plus annual local growth, adjusted for revenue  
7 changes approved by voters after 2010, and subdivision (2) of  
8 subsection H and subsection I reductions.

9 (3) The maximum annual percentage change in each district's  
10 property tax revenue equals inflation in the prior calendar year  
11 plus annual local growth, adjusted for property tax revenue changes  
12 approved by voters after 2010 and subdivision (2) of subsection H  
13 and subsection I reductions.

14 (4) If revenue from sources not excluded from fiscal year  
15 spending exceeds these limits in dollars for that fiscal year, the  
16 excess shall be refunded in the next fiscal year unless voters  
17 approve a revenue change as an offset. Initial district bases are  
18 current fiscal year spending and 2010 property tax collected in  
19 2010. Qualification or disqualification as an enterprise shall  
20 change district bases and future year limits. Future creation of  
21 district bonded debt shall increase, and retiring or refinancing  
22 district bonded debts shall lower, fiscal year spending and  
23 property tax revenue by the annual debt service so funded. Debt  
24 service changes, reductions, subsection A refunds and subdivision



1 (3) of subsection C refunds, and voter-approved revenue changes are  
2 dollar amounts that are exceptions to, and not part of, any  
3 district base. Voter-approved revenue changes do not require a tax  
4 rate change.

5 Subsection H -- Revenue Limits

6 (1) New or increased transfer tax rates on real property are  
7 prohibited. No new state real property tax or local district  
8 income tax may be imposed. Neither an income tax rate increase nor  
9 a new state definition of taxable income may apply before the next  
10 tax year. Any income tax law change after July 1, 2010, shall also  
11 require all taxable net income to be taxed at one rate, excluding  
12 refund tax credits or voter-approved tax credits, with no added tax  
13 or surcharge.

14 (2) Each district may enact cumulative uniform exemptions and  
15 credits to reduce or end business personal property taxes.

16 (3) Regardless of reassessment frequency, valuation notices  
17 shall be mailed annually and may be appealed annually, with no  
18 presumption in favor of any pending valuation. Past or future  
19 sales by a lender or government shall also be considered as  
20 comparable market sales and their sales prices kept as public  
21 records. Actual value shall be stated on all property tax bills  
22 and valuation notices and, for residential real property,  
23 determined solely by the market approach to appraisal.

24 Subsection I -- State Mandates

1       Except for public education through grade twelve or as  
2 required of a local district by federal law, a local district may  
3 reduce or end its subsidy to any program delegated to it by the  
4 Legislature for administration. For current programs, the state  
5 may require ~~90~~ ninety days' notice and that the adjustment occur in  
6 a maximum of three equal annual installments.

7               *Subsection J -- Revenue Shortfall Reserve Fund*

8       (1) Notwithstanding other provisions of this section, the  
9 state shall maintain within the State Treasury a revenue shortfall  
10 reserve fund, to be funded from surplus revenues, if any, in the  
11 state fund, general revenue, as the surplus revenues may accrue  
12 from time to time, and be employed as provided in this subsection.  
13 Within ~~60~~ Sixty days of the end of each fiscal year, the secretary  
14 shall cause to be deposited into the revenue shortfall reserve  
15 fund, the first ~~50~~ percent percent of all surplus revenues, if any,  
16 determined to have accrued during the fiscal year just ended.

17       The revenue shortfall reserve fund shall be funded  
18 continuously and on a revolving basis in accordance with this  
19 subsection up to an aggregate amount not to exceed five percent of  
20 the total appropriations from the state fund, general revenue, for  
21 the fiscal year just ended. If at the end of any fiscal year, the  
22 revenue shortfall reserve fund is funded at an amount equal to or  
23 exceeding five percent of the state's General Revenue Fund budget  
24 for the fiscal year just ended, then there shall be no further

1 authorization or obligation of the secretary under the provisions  
2 of this section to apply any surplus revenues as set forth in this  
3 subsection until such time as the revenue shortfall reserve fund  
4 balance is less than five percent of the total appropriations from  
5 the state fund, general revenue for the fiscal year just ended.

6       (2) Not earlier than November 1, of each calendar year, if the  
7 state's fiscal circumstances are such as to otherwise trigger the  
8 authority of the Governor to reduce appropriations under this  
9 section or section twenty-one or section twenty-two of this  
10 article, then in that event the Governor may notify the presiding  
11 officers of both houses of the Legislature in writing of his or her  
12 intention to convene the Legislature pursuant to Section 19,  
13 article VI of the West Virginia Constitution for the purpose of  
14 requesting the introduction of a supplementary appropriation bill  
15 or to request a supplementary appropriation bill at the next  
16 preceding regular session of the Legislature to draw money from the  
17 surplus revenue shortfall reserve fund to meet any anticipated  
18 revenue shortfall. If the Legislature fails to enact a  
19 supplementary appropriation from the revenue shortfall reserve fund  
20 during any special legislative session called for the purposes set  
21 forth in this section or during the next preceding regular session  
22 of the Legislature, then the Governor may proceed with a reduction  
23 of appropriations pursuant to sections twenty-one and twenty-two of  
24 this article. Should any amount drawn from the revenue shortfall

1 reserve fund pursuant to an appropriation made by the Legislature  
2 prove insufficient to address any anticipated shortfall, then the  
3 Governor may also proceed with a reduction of appropriations  
4 pursuant to sections twenty-one and twenty-two of this article.

5 (3) The Legislature is authorized and may make an  
6 appropriation from the revenue shortfall reserve fund for revenue  
7 shortfalls, for emergency revenue needs caused by acts of God or  
8 natural disasters or for other fiscal needs as determined solely by  
9 the Legislature.

10 (4) Prior to October 31, in any fiscal year in which revenues  
11 are inadequate to make timely payments of the state's obligations,  
12 the Governor may by executive order, after first notifying the  
13 presiding officers of both houses of the Legislature in writing,  
14 borrow funds from the revenue shortfall reserve fund. The amount  
15 of funds borrowed under this subsection may not exceed one and one-  
16 half percent of the general revenue estimate for the fiscal year in  
17 which the funds are to be borrowed, or the amount the Governor  
18 determines is necessary to make timely payment of the state's  
19 obligations, whichever is less. Any funds borrowed pursuant to  
20 this subsection shall be repaid, without interest, and redeposited  
21 to the credit of the revenue shortfall reserve fund within 90 days  
22 of their withdrawal.

23 *Subsection K - - Budget Stabilization Fund*

24 For any state fiscal year that commences on or after July 1,

1 2010, if revenue from sources not excluded from total state  
2 revenues exceeds the limit on total state revenue calculated in  
3 accordance with section three, for that fiscal year, the excess  
4 shall be reserved or refunded as follows:

5       (1) The State Treasurer shall first transfer the excess to the  
6 emergency reserve cash fund to the extent necessary to ensure that  
7 the balance of the fund at the end of the fiscal year is an amount  
8 equal to 10 percent of the total state revenues limit for the  
9 fiscal year as required by section three of this amendment. The  
10 State Treasurer shall transfer additional excess to the budget  
11 stabilization fund which fund is hereby created, to the extent  
12 necessary to ensure that the balance of the fund at the end of the  
13 fiscal year is an amount equal to ten percent of the total state  
14 revenue limit for the fiscal year. The State Treasurer shall not  
15 transfer any moneys other than the revenues in excess of the total  
16 state revenues limit to the fund. Interest or other income earned  
17 on the budget stabilization fund shall accrue to the fund.

18       (2) For any state fiscal year that commences on or after July  
19 1, 2010, if the amount of the total state revenues is less than the  
20 amount of total state revenues for the prior fiscal year, the State  
21 Treasurer shall transfer money from the budget stabilization fund  
22 to the General Fund in an amount equal to the difference between  
23 the amount of total state revenues for the prior fiscal year and  
24 the amount of total state revenues for the fiscal year. Under no

1 other circumstances shall the State Treasurer transfer moneys from  
2 the budget stabilization fund.

3 (3) Any excess that remains after the State Treasurer has made  
4 the transfers required by paragraph (ii) of this section shall be  
5 reserved in the current fiscal year and refunded during the next  
6 fiscal year through temporary income or sales tax rate reductions.

7 (4) On or after July 1, 2010, transfers of state cash fund  
8 principal from any state cash fund to the General Fund, other than  
9 transfers from the emergency reserve fund or the budget  
10 stabilization fund to the General Fund are prohibited. On or after  
11 July 1, 2010, state cash fund appropriations that either supplant  
12 any State General Fund appropriation, or that, if not made would  
13 necessitate a State General Fund appropriation are prohibited. For  
14 purposes of this paragraph (v), a state cash fund appropriation  
15 that is funded by user charges or fees imposed on goods or services  
16 that do not exceed the cost of the goods or services provided shall  
17 not be deemed to be an appropriation that supplants any general  
18 fund appropriation.

19 *Resolved further,* That in accordance with the provisions of  
20 article eleven, chapter three of the Code of West Virginia, 1931,  
21 as amended, such proposed amendment is hereby numbered "Amendment  
22 No. 1" and designated as the "The Taxpayer's Bill of Rights  
23 Amendment" and the purpose of the proposed amendment is summarized  
24 as follows: "To reasonably restrain the growth of government by

1 limiting the amount of revenues and expenditures."

NOTE: The purpose of this resolution is to restrain the growth of government by limiting the amount of revenues and expenditures.

This amendment is new; therefore, it has been completely underscored.